

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ARLEN FOSTER and CINDY FOSTER,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF AGRICULTURE; TOM VILSACK, in his official capacity as Secretary of the United States Department of Agriculture; THE NATURAL RESOURCES CONSERVATION SERVICE; TERRY COSBY, in his official capacity as Acting Chief of the Natural Resources Conservation Service; and JACKIE BYAM¹, in her official capacity as Acting South Dakota State Conservationist,

Defendants.

4:21-cv-04081-RAL

**FEDERAL DEFENDANTS' MOTION TO
DISMISS OR ALTERNATIVELY FOR
SUMMARY JUDGMENT**

Come now the Federal Defendants, by and through undersigned counsel, and moves to dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), 12(c), and 56. The Court lacks subject matter jurisdiction over this action, and Plaintiffs have otherwise failed to state a claim upon which relief may be granted. The case must therefore be dismissed on the pleadings or upon summary judgment. This motion is supported by a memorandum and the Declaration of Deke Hobbick, along with the exhibit attached thereto.

¹ Jackie Byam is presently the Acting South Dakota State Conservationist and is automatically substituted for Laura Broyles as the defendant in this case. See Fed. R. Civ. P. 25(d).

Dated this 15th day of November, 2021.

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